

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2010-355-C - ORDER NO. 2011-132

FEBRUARY 15, 2011

IN RE: Application of Mobilitie, LLC for a	)	ORDER GRANTING
Certificate of Public Convenience and	)	CERTIFICATE AND
Necessity to Provide Resold and Facilities-	)	APPROVING FLEXIBLE
Based Local Exchange and Interexchange	)	REGULATION
Telecommunications Services in the State of	)	
South Carolina and for Flexible Regulation	)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) by way of the Application of Mobilitie, LLC (“Mobilitie” or the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to provide resold and facilities-based interexchange and local exchange telecommunications services within the State of South Carolina. The Company’s Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2010) and the rules and regulations of the Commission. By its Application, Mobilitie also requests flexible regulation of its local exchange service offerings pursuant to Order No. 98-165 in Docket No. 1997-467-C, and waiver of certain Commission regulations.

The Commission’s Clerk’s Office instructed Mobilitie to publish, one time, a Notice of Filing in newspapers of general circulation in the areas of the state affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the Application of Mobilitie and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. Mobilitie complied with this instruction

and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was filed by the South Carolina Telephone Coalition (“SCTC”). Subsequent to the intervention, Mobilitie and the SCTC reached a Stipulation, attached hereto as Order Exhibit 1. The South Carolina Office of Regulatory Staff (“ORS”) is a party to this Docket pursuant to statute.

A hearing was convened on January 27, 2011, at 10:00 a.m. in the Commission’s Law Library in Columbia, South Carolina, before F. David Butler, Esquire, Hearing Examiner. Mobilitie was represented by John J. Pringle, Jr., Esquire. The ORS was represented by Shealy Boland Reibold, Esquire. Gene Beall, Executive Vice President, Strategy and Services, of the Company appeared via video conference and testified in support of the Company’s Application.

The record reveals that Mobilitie is a limited liability company organized under the laws of the State of Nevada and authorized to transact business in South Carolina as a foreign company. According to Mr. Beall, the Company seeks authority to provide local exchange and interexchange services. Mr. Beall explained the Company’s request for authority, and the record further reveals the Company’s services, operations, and marketing procedures.

The Company’s primary market is as a carrier’s carrier. The Company’s service allows wireless carriers to expand the coverage of wireless services with less intrusive facilities. Mobilitie’s radio frequency (RF) transport service helps wireless providers eliminate dead spots and increase bandwidth needed for emerging and future services, by means of fiber optics and small, unobtrusive antennas located primarily on existing utility

and/or streetlight poles. The Company has no plans to offer services to residential or business end-user customers at this time.

Mr. Beall also discussed Mobilitie's technical, financial, and managerial resources to provide the services for which it seeks authority. Mr. Beall offered that Mobilitie possesses sufficient financial resources to support its operations in South Carolina. With regard to management and technical capabilities, the Company's Application and Mr. Beall's testimony both evidence that Mobilitie's management has experience in telecommunications, information technology, regulatory matters, and accounting and finance. Mr. Beall also testified that Mobilitie will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders. Mr. Beall offered that approval of Mobilitie's Application would serve the public interest. Mr. Beall, on behalf of the Company, requested an exemption of Rule 103-610, requiring the maintenance of its records in the State of South Carolina. Mr. Beall, on behalf of the Company, also requested an exemption of Rule 103-611, requiring maintenance of financial records in conformance with the Uniform System of Accounts ("USOA"). Mobilitie maintains its books in accordance with Generally Accepted Accounting Principles ("GAAP").

After consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Mobilitie is organized as a limited liability company under the laws of the State of Nevada, and is authorized to do business as a foreign company in South Carolina by the Secretary of State.

2. Mobilitie desires to operate as a provider of resold and facilities-based local and interexchange services in South Carolina.

3. We find that Mobilitie possesses the managerial experience and capability to operate as a provider of local exchange services and interexchange services in South Carolina.

4. We find that Mobilitie possesses sufficient financial resources to provide the services as described in its Application and testimony.

5. We find that the issuance of a Certificate of Public Convenience and Necessity to Mobilitie to operate as a provider of interexchange and local exchange telecommunications services in South Carolina would be in the best interest of the citizens of South Carolina by providing more innovative services.

6. We find that Mobilitie does not intend to offer prepaid calling card services but, in the event that Mobilitie in the future offers or provides such a service, Mobilitie shall post a surety bond or certificate of deposit for prepaid calling card and long distance services in the amount of \$5,000, as required by the Commission.

7. Mobilitie requests a waiver of 26 S.C. Code Ann. Regs. 103-610. The Commission finds Mobilitie's requested waiver reasonable and understands the potential difficulty presented to Mobilitie should the waiver not be granted. Further, we find that a

waiver of 26 S.C. Code Ann. Regs. 103-610 is in the public interest. We also believe that exemption from the policies that would require the Company to keep its records in the State of South Carolina is reasonable. Mobilitie also requests a waiver of 26 S.C. Code Ann. Regs. 103-611. The Commission finds Mobilitie's requested waiver reasonable and understands the potential difficulty presented to Mobilitie should the waiver not be granted. Further, we find a waiver of 26 S.C. Code Ann. Regs. 103-611 to be in the public interest. We also believe that exemption from the policies that would require the Company to keep its records under the USOA is reasonable.

8. The Company has the managerial, technical, and financial resources to provide the services as described in its Application. S.C. Code Ann. Section 58-9-280 (B) (1) (Supp. 2010).

9. The Commission finds that the Company's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B) (3) (Supp. 2010).

10. The Commission finds that the Company will support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280 (B) (4) (Supp. 2010).

11. The Commission finds that services to be provided by the Company will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280 (B) (2) (Supp. 2010).

12. The Commission finds that the provision of local exchange service by the Company “does not otherwise adversely impact the public interest.” S.C. Code Ann. Section 58-9-280(B)(5) (Supp. 2010).

13. Following execution of a Stipulation with the Intervenor SCTC, the SCTC withdrew its opposition to the Application.

### **CONCLUSIONS OF LAW**

1. The Commission concludes that Mobilitie possesses the managerial, technical, and financial resources to provide the services as described in its Application.

2. The Commission concludes that Mobilitie will participate in the support of universally available telephone service at affordable rates to the extent that Mobilitie may be required to do so by the Commission.

3. The Commission concludes that Mobilitie will provide services which will meet the service standards of the Commission.

4. The Commission concludes that approval of Mobilitie’s Application to provide intrastate telecommunications services within South Carolina will serve the public interest by providing for efficient use of existing telecommunications resources.

5. The Commission concludes that the provision of telecommunications service by Mobilitie will not adversely impact the public interest.

6. The Commission concludes that the issuance of the authority to provide intrastate interexchange and local exchange telecommunications services as requested by Mobilitie and as set forth in its Application and Mr. Beall’s testimony is in the best interest of the citizens of the State of South Carolina.

7. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to Mobilitie to provide resold and facilities-based intrastate interexchange and local exchange telecommunications services.

8. The Commission adopts a rate design for Mobilitie for any residential interexchange services it may offer which include maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. *In Re: Application of GTE Sprint Communications Corporation, etc.*, Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

9. Mobilitie shall not adjust any residential interexchange rates for end-users below the approved maximum level without notice to the Commission and to the public. Mobilitie shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. *In Re: Application of GTE Sprint Communications, etc.*, Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services that may be reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2010).

10. The Commission concludes the Company's local exchange telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for the Company's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels approved by the Commission. Further, the Company's local exchange service tariff filings are presumed valid upon filing. An investigation of the tariff filing may be instituted within 30 days of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. If an investigation is instituted on a particular tariff filing, notice of the investigation will be provided to the person or entity making the tariff filing and to the Commission. The notice is timely if dated within thirty days of the filing date. Further, any such tariff filings will be subject to the same monitoring process as similarly situated local exchange carriers.

11. We conclude that Mobilitie's request for waiver of 26 S.C. Code Ann. Regs. 103-610 and 103-611 should be granted, since strict compliance with those regulations potentially causes undue hardship on the Company.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity should be granted to Mobilitie to provide resold interexchange services through tariffs approved by the Commission and by means of its own facilities as applicable, as well as to provide resold

and facilities-based local exchange telecommunications services within the State of South Carolina.

2. The Company's Application and Mr. Beall's testimony indicate the Company's primary market is as a carrier's carrier. If the Company should decide to begin offering services to end-user retail customers in the future, the Company shall notify the Commission and ORS and modify its tariff accordingly.

3. The Company's rate designs for its products shall conform to those designs described in Conclusions of Law above.

4. If it has not already done so by the date of issuance of this Order, Mobilitie shall file its revised tariff, if any, and an accompanying price list for any applicable rates within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

5. Mobilitie agrees it will file its final, revised tariff utilizing the Commission's e-filing system for tariffs. The revised tariff should be electronically filed in a text searchable PDF format using the Commission's DMS System (<http://dms.psc.sc.gov>). An additional copy should be sent via email to [etariff@psc.sc.gov](mailto:etariff@psc.sc.gov) to be included in the Commission's ETariff System (<http://etariff.psc.sc.gov>). Future revisions to the tariff should be made using the ETariff System. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

6. Any retail interexchange service offered by the Company will be subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

7. With regard to any resale of service by the Company, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. In any provision of retail interexchange or local exchange services, Mobilitie shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission.

9. With regard to the origination and termination of toll calls within the same LATA, Mobilitie shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (47 C.F.R. § 51.209). Specifically, where applicable, Mobilitie shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

10. Mobilitie shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore,

Mobilitie shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website or at the ORS's website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov). The title of this form is "Telecommunications Company Annual Report." This form shall be utilized by the Company to file annual financial information with the Commission and ORS and shall be filed no later than **April 1<sup>st</sup>**.

Commission gross receipts forms are due to be filed with the Commission and ORS no later than **August 31<sup>st</sup>** of each year. The proper form for filing gross receipts information can be found at the ORS website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov), and the appropriate form is entitled "Gross Receipts Form."

Each telecommunications company certified in South Carolina is required to file annually with the ORS the South Carolina Universal Service Fund ("USF") Contribution Worksheet, which may be found on the ORS's website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov). This worksheet provides ORS information required to determine each telecommunications company's liability to the State USF fund. The State USF worksheet is due to be filed annually no later than **July 1<sup>st</sup>** with ORS.

11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests, and repairs. In addition, the Company shall provide to the Commission and ORS in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

Mobilitie shall file the names, addresses, and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website at [www.psc.sc.gov/forms.asp](http://www.psc.sc.gov/forms.asp); this form shall be utilized for the provision of this information to the Commission and ORS. Further, the Company shall promptly notify the Commission and ORS in writing if the representatives are changed.

12. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

13. At the hearing, Mobilitie requested a waiver of 26 Code Ann. Regs. 103-610 (Supp. 2010), requiring that records required by the Commission’s Rules and Regulations be maintained in South Carolina. The Commission finds Mobilitie’s requested waiver reasonable and understands the potential difficulty presented to Mobilitie should the waiver not be granted. The Commission therefore grants the requested waiver. However, Mobilitie shall make available its books and records at all reasonable times upon request by the ORS, and Mobilitie shall promptly notify the Commission and ORS if the location of its books and records changes.

14. Mobilitie also requests that it be exempt from record keeping policies that require a carrier to maintain its financial records in conformance with the Uniform System of Accounts. The USOA was developed by the FCC as a means of regulating telecommunications companies subject to rate base regulation. As a competitive carrier, Mobilitie maintains its book of accounts in accordance with Generally Accepted Accounting Principles (“GAAP”). GAAP is used extensively by interexchange carriers

and other competitive local exchange carriers. Accordingly, Mobilitie requests an exemption from the USOA requirements. We grant the Company's request for the reasons stated above.

15. Mobilitie shall be required to comply with Title 23, Chapter 47, South Carolina Code of Laws Annotated which governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs Mobilitie to contact the appropriate authorities regarding 911 service in the counties and cities where Mobilitie will be operating. Contact with the appropriate 911 service authorities is to be made before providing voice or dial tone telephone service in South Carolina. Accompanying this Order is a memo from the State 911 Office of Research & Statistics of the South Carolina Budget and Control Board. This memo provides information about contacting County 911 Coordinators. By this Order and prior to providing voice or dial-tone services in South Carolina, Mobilitie is directed to contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company's operations as required by the 911 system.

16. To the extent necessary, Mobilitie shall engage in good faith negotiations with non-BellSouth incumbent local exchange carriers whose networks interconnect with BellSouth at the same local tandem regarding traffic exchange;

17. This Order shall remain in full force and effect until further Order of the Commission

BY ORDER OF THE COMMISSION:

  
\_\_\_\_\_  
John E. Howard, Chairman

ATTEST:

  
\_\_\_\_\_  
David A. Wright, Vice Chairman

(SEAL)

STATE OF SOUTH CAROLINA  
*State Budget and Control Board*

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Bobby Bowers  
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August 2, 2004

To: Telephone Companies New to South Carolina

In an effort to continue providing quality emergency services to the citizens of South Carolina, the State 911 Office requests that before beginning telephone services in a county, you contact the 911 Coordinator in that county. This will allow both parties to obtain important information about providing 911 services in that county. If you have already begun services, then contact the coordinator as soon as possible.

A list of County 911 Coordinators can be found on the South Carolina E911 homepage at [www.ors.state.sc.us/digital/E-911.ASP](http://www.ors.state.sc.us/digital/E-911.ASP). If you have any questions related to 911 in South Carolina, you may contact E911 Coordinations at the Office of Research and Statistics at 803-734-3883. The person responsible for this can also be found on the 911 homepage. Please be aware that some cities may have their own E911 systems, these are also listed on the 911 homepage. These city coordinators will need to be contacted in addition to the county coordinators.

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BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

Docket No. 2010-355-C

Re: Application of Mobilitie, LLC for a Certificate )  
of Public Convenience and Necessity to Provide )  
Resold and Facilities-based Local Exchange )  
Telecommunications Service in the State of ) **STIPULATION**  
South Carolina )  
\_\_\_\_\_ )

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and Mobilitie, LLC ("Mobilitie") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose Mobilitie's Application. SCTC and Mobilitie stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to Mobilitie, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.
2. Mobilitie stipulates and agrees that any Certificate which may be granted will authorize Mobilitie to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.
3. Mobilitie stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.
4. Mobilitie stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and until Mobilitie provides such rural incumbent LEC and the Commission with written notice of its

intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, Mobilitie acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. Mobilitie stipulates and agrees that, if Mobilitie gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then Mobilitie will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. Mobilitie acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and Mobilitie, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. Mobilitie agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

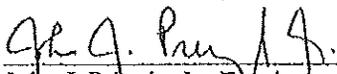
9. Mobilite hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

10. Notwithstanding any provision contained herein, the terms, conditions, and limitations of the Stipulation apply only in those instances where a rural telephone company's federal rural exemption under 47 U.S.C. § 251(f)(1) is implicated.

AGREED AND STIPULATED to this 24<sup>th</sup> day of December, 2010.

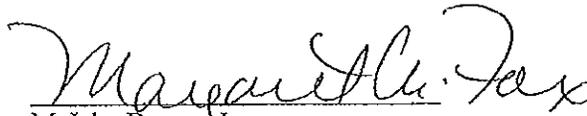
Mobilite, LLC

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ATTACHMENT A

South Carolina Telephone Coalition Member Companies  
for Purposes of Local Service Stipulation

Chesnee Telephone Company  
Chester Telephone Company  
Farmers Telephone Cooperative, Inc.  
Ft. Mill Telephone Company  
Home Telephone Company, Inc.  
Lancaster Telephone Company  
Lockhart Telephone Company  
McClellanville Telephone Company  
Norway Telephone Company  
Palmetto Rural Telephone Cooperative, Inc.  
Piedmont Rural Telephone Cooperative, Inc.  
Pond Branch Telephone Company  
Ridgeway Telephone Company  
Rock Hill Telephone Company  
Sandhill Telephone Cooperative, Inc.  
St. Stephen Telephone Company  
West Carolina Rural Telephone Cooperative, Inc.  
Williston Telephone Company